



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2011-0619]

Mechanisms of Compliance with United States Citizenship Requirements for the Ownership of Vessels Eligible To Engage in Restricted Trades by Publicly Traded Companies

AGENCY: Coast Guard, DHS.

ACTION: Notice; response to comments.

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SUMMARY: As part of its January 2011 report on a Coast Guard investigation into the citizenship of owners of a publicly traded company, the National Vessel Documentation Center recommended requesting comments and information on the various measures that publicly traded companies employ to comply with the statutory requirement that at least 75 percent of the ownership of companies that operate vessels engaged in the coastwise trade be vested in U.S. citizens. On November 3, 2011, the Coast Guard published a notice in the *Federal Register* seeking those comments and that information. The Coast Guard read the written submissions and listened to oral comments generated by that notice and issues today's notice to inform industry and the public on how the Coast Guard plans to exercise its discretion in

enforcing the referenced U.S. citizen ownership requirement.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, are part of docket USCG-2011-0619 and are available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2011-0619 in the "Search" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Mr. Douglas Cameron, United States Coast Guard, National Vessel Documentation Center; telephone 304-271-2506, email [Douglas.G.Cameron@uscg.mil](mailto:Douglas.G.Cameron@uscg.mil).

If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

On November 3, 2011, the Coast Guard published a notice in the *Federal Register* (76 FR 68203) ("2011 notice") requesting comments and information on the various

measures that publicly traded companies employ in order to comply with the requirement in 46 U.S.C. 50501 that at least 75 percent of the ownership of companies that operate vessels engaged in the coastwise trade be vested in U.S. citizens. The 2011 notice was published because of a recommendation in a January 12, 2011, Coast Guard report of an investigation into the citizenship of Trico Marine Services, Inc. ("Trico Report"). A copy of this report has been placed in the docket and is also available via <http://www.uscg.mil/hq/cg5/nvdc/> (under the Latest News tab). The Coast Guard solicited the following information in the 2011 notice (emphasis added):

This notice solicits information, for the benefit of the Coast Guard but also for the mutual benefit of industry, as to the mechanisms that publicly traded companies have employed, **including but not limited to those mentioned in the quoted language above**, to assure compliance with United States citizenship requirements. We are also requesting information on the manner in which those mechanisms function to provide that assurance and, when called upon to do so, to offer proof of compliance. 76 FR 68205.

The reference to "the quoted language above" was to language in the most recent Coast Guard statement published in the *Federal Register* which addressed this subject. See 58 FR 60256, November 15, 1993 ("1993 final rule"). At that time, the Coast Guard offered the following statement which referenced only two mechanisms as examples (emphasis

added) :

The documentation laws are meant to be restrictive and are intended to limit the persons who are eligible to document vessels under U.S. law and acquire trading privileges. Corporations can make proof of citizenship less difficult, for instance by restricting sale of their stock to U.S. citizens, or using a transfer agent to administer a dual stock certificate system.

Of course, any U.S. corporation that is unwilling to subject itself to the possibility of having to prove that it qualifies for coastwise or fisheries privileges can choose not to seek them. The Coast Guard will not be bound by any presumptions or inferences in making eligibility determinations for documentation purposes. 58 FR 60258-59.

#### Comments in Response to 2011 Notice

The comments the Coast Guard received from industry in response to the 2011 notice detailed how companies monitor and determine compliance with the statutory standard in the current paperless securities trading market, which is regulated by the Securities and Exchange Commission ("SEC") and more complex than the system that existed when the Coast Guard issued its 1993 final rule. Those comments indicated that publicly-traded companies employ several measures to monitor and determine compliance, sometimes in combination with one another. These include, among others:

- Use of the Depository Trust Company segregated account (or "SEG-100") system;
- Monitoring SEC filings re: 5% holders (Schedules 13D, 13G, Form 13F) and follow-up requests for information from filers;
- Use of protective provisions in organizational documents in order to guard against and rectify the possibility of what are referred to as excess shares;

- Communications with Non-Objecting Beneficial Owners (or "NOBOs");
- Analysis of registered stockholders; and
- Use of dual stock certificates.

We also considered comments made at a general discussion of these issues at a forum organized by the Chamber of Shipping of America held on September 13, 2012, in Washington, DC, the minutes of which have been placed in the online docket (USCG-2011-0619 via [www.regulations.gov](http://www.regulations.gov)).

The Coast Guard has taken all of the comments offered into account and is grateful to the commenters who were thorough, candid and forthcoming in their responses to the 2011 notice, both in the written responses and the discussion engaged in at the forum referred to above. The responses received and information provided are exactly what had been hoped for by publication of the notice and affirmed our sense, following issuance of the Trico Report, that it was appropriate, in light of the significant technological changes that have occurred in the trading of shares of stock since the Coast Guard's 1993 final rule, to take another look at the issue.

The Coast Guard recognizes that in the modern, complex, multi-faceted, and dynamic securities market no single measure or combination of measures may always provide direct proof of the citizenship of every

shareholder. The Coast Guard also recognizes that the choice of compliance measures is best left up to the individual company as each one is best positioned to evaluate initially and on an on-going basis the totality of its circumstances.

Companies that employ, and diligently administer and adhere to, measures such as those identified above in an active system of monitoring stock ownership may use these as a sufficient basis to file an Application for Initial Issue, Exchange, or Replacement of Certificate of Documentation (form CG-1258) to document a vessel with a coastwise endorsement. In that regard, while the Coast Guard expects diligence and good faith efforts, it will be realistic about acceptable measures in the current trading environment. Finally, the Coast Guard acknowledges that it does not seek to unnecessarily restrict access to the legitimate capital markets, which it recognizes to be essential to the maintenance of a strong and vibrant coastwise shipping industry, nor to mandate a one-size-fits-all structure or mechanism to ensure compliance with U.S. citizenship requirements. The Coast Guard, however, must fulfill its obligation to ensure compliance with those requirements, and will look for due diligence and timely good faith action by every company that seeks to

participate in restricted trading privileges, using means that are available to the company and at its disposal, in order to satisfy U.S. citizenship requirements.

The Coast Guard has a long-standing policy that the filing of a properly completed CG-1258 establishes a rebuttable presumption that the applicant is a United States citizen. See 46 CFR 67.43. The presumption can be rebutted with evidence that the statutory requirements have not been met. Such evidence can provide the basis for the Coast Guard to initiate an investigation and the burden will be upon the vessel owner to establish compliance. In investigations of publicly-traded companies for compliance with the statutory citizenship requirements, the Coast Guard will give positive consideration to a company's diligent and good faith efforts to timely and effectively monitor the ownership of its stock and take prompt action where necessary so as to maintain compliance with the statutory requirements.

#### Further Development of Enforcement Policy

The Coast Guard will continue to listen to industry and the public and monitor events concerning this issue. We anticipate refining our enforcement policy as we see how well our stated policy works in allowing the Coast Guard to meet its obligation to ensure that at least 75 percent of

the ownership of companies that operate vessels engaged in the coastwise trade are vested in U.S. citizens. If we see the need for any new enforcement policy, we would invite comments on any such policy through a separate notice. We appreciate all the comments made in response to the 2011 notice.

This notice is issued under authority of 5 U.S.C. 552(a).

DATE: November 14, 2012

Timothy V. Skuby,  
Director, National Vessel Documentation Center,  
U.S. Coast Guard.

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